IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

WP(C).No. 29489 of 2003(I)

PETITIONERS:

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1. **RAVI MOHANAN NAIR, HILL VIEW BUNGLOW, ELAMANNOOR MURI, ENADIMANGALAM VILLAGE.**

2. **PRASANNA KUMARI, W/O.RAVI MOHANAN NAIR, HILL VIEW BUNGLOW, ELAMANNOOR MURI, ENADIMANGALAM VILLAGE.**

3. **ABHILASH, S/O.RAVI MOHANAN NAIR, HILL VIEW BUNGLOW, ELAMANNOOR MURI, ENADIMANGALAM VILLAGE.**

BY ADV. SRI.PIOUS JACOB

RESPONDENTS:

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1. **KUNJU VARKEY CHERIAN, PALAKKOTTU MURI, KALLOORIKKATTU VILLAGE, MOOVATTUPUZHA TALUK.**

2. **BABY AUGUSTINE RATHAPPALLIL HOUSE, PALAKKOTTU MURI, KALLOORIKKATTU VILLAGE, MOOVATTUPUZHA TALUK.**

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.29489/2003 I

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PLAINT IN O.S.NO.152 OF 2003 ON THE FILES OF THE MUNSIFF'S COURT, ADOOR.**

EXT.P2: **COPY OF THE SUMMONS SERVED ON THE PETITIONERS BY THE COURT BELOW DTD. 17/03/2003.**

EXT.P3: **COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER BEFORE THE COURT BELOW DTD. 20/08/2003.**

EXT.P4: **COPY OF THE I.A.NO.2698/03 FILED BEFORE THE COURT BELOW DTD. 20/08/2003.**

EXT.P5: **COPY OF THE ORDER OF THE MUNSIFF'S COURT, ADOOR IN I.A.NO.2698/03 IN O.S.NO.152/03 DTD. 20/08/2003.**

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 29489 of 2003

Dated this the 23rd day of July , 2007

JUDGMENT

The petitioners have not remitted process though about four years have elapsed since this court ordered notice. The learned counsel for the petitioners seeks time. However, I find that Ext.P5 order rejecting the written statements filed by the petitioners has been passed on the reason that the court has no power to receive the written statement which are filed beyond the statutory period. The above view cannot be correct in view of the pronouncement of law by the Supreme Court in **Kailash v. Nanhku (2005 (2) KLT 623**).

2. Under the above circumstances, I am inclined to set aside Ext.P5 order and allow the writ petition even without waiting for service of notice on the respondents. However, considering the laxity on the part of the petitioners in the matter of remitting the process, I am inclined to do so only on conditions.

3. Ext.P5 will stand set aside and I.A.No.2698/2003 will go back to the learned Munsiff for taking fresh decision in accordance with the principles laid down by the Supreme Court in Kailash's case(supra) on condition that the petitioners pay a sum of Rs.500/- (Rs.Five Hundred only) to the High Court Legal Service Committee within 10 days from today. Once the court below notices evidence regarding the remittance of the above amount, the court below will repost I.A.No.2698/2003, hear both sides and take a fresh decision. If remittance as directed above is not made, the writ petition will stand dismissed.

PIUS C. KURIAKOSE,

JUDGE.

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